

FIXED PENALTY NOTICES (FPNs) FOR LITTERING



To:

Councillor Anna Smith, Executive Councillor for Streets and Open Spaces
Environment & Community Scrutiny Committee [28/06/2018]

Report by:

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Wards affected:

Abbey, Arbury, Castle, Cherry Hinton, Coleridge, East Chesterton, King's
Hedges, Market, Newnham, Petersfield, Queen Edith's, Romsey,
Trumpington, West Chesterton

Key Decision

1. Executive Summary

The purpose of this report is:

- a) To inform the Executive Councillor and Scrutiny Committee Members of the new powers for littering from a motor vehicle that came into force on the 1st April 2018 under The Environmental Offences (Fixed Penalties) (England) Regulations 2017 ("The Regulations"), which amend sections 34A(12), 47ZB(4)(5), and 73A(2)(b) (3) & (8) of the Environmental Protection Act 1990; and The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018.
- b) To seek authority to revise the current fixed penalty amount for littering to the new legal maximum FPN level of £150 for all littering offences and to give a discount of £90 (i.e. discounted fine value of £60) for early payment provided payment is made within 10 days of the date the FPN was issued.

2. Recommendations

The Executive Councillor is recommended to:

- a) Delegate authority to the Head of Environmental Services to introduce the new powers and to authorise the appropriate officers to issue fixed penalty notices (FPNs) under The Environmental Protection Act 1990

and The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

- b) Adopt the new legal maximum FPN level of £150 for littering offences and to give discount for early payment of £90 (i.e. discounted fine value of £60) provided payment is made within 10 days of the date the FPN was issued.

3. Background

3.1 Since 2015, public realm enforcement officers (6 FTE) have issued 960 FPNs for littering, with the vast majority of these being for smoking related litter; and a further 168 fixed penalty notices for trade waste and domestic waste issues.

3.1.1 In June 2016, FPNs were introduced by the City Council, as an alternative to prosecution, for small scale flytipping (ie. anything more than 2 black bags and up to 20 black bags or the equivalent in volume). To date, 80 FPNs have since been issued as an alternative to prosecution. If the FPN goes unpaid, the offender is then prosecuted for the original offence of flytipping. In introducing FPNs for small scale flytipping, the Council adopted the upper limit level of £400 and to give discount of £240 for payment within ten days.

Introduction of New Legislation.

3.1.2 On the 1st April, 2018, the Environmental Offences (Fixed Penalties) (England) Regulations 2017 (hereafter referred to as “the Regulations”) came into effect. This change in legislation gave local authorities the ability to raise FPNs, from the current maximum level of £80, to a new maximum of £150 , with a reduction for early payment. This again is subject to the discretion of the local authority. The change in legislation only applies to Fixed Penalties issued for littering in the street/public spaces, and the new Civil Penalties issued for littering from a motor vehicle on the Public Highway. In accordance with the City Council’s June, 2016, decision to adopt the FPN upper limit level for small scale fly tipping, it is proposed that the City Council also adopt the upper limit charge level of £150 for littering offences

3.1.3 Alongside the aforementioned legislation relating to changes in the level of FPN charges for Littering. The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 gives local authorities the ability to issue civil penalty notices to the registered keeper of a vehicle from which litter has been thrown. Non-payment of fines will be pursued via the County Court.

3.2 Littering is a significant problem to local communities and a risk to the quality of the environment. Having to manage littering of the public realm is an unnecessary additional cost to local authorities and the tax payer; and at a time of significant public sector budget pressure. Since the LEQSE (The Local Environmental Quality Survey of England 2014/15) was launched by Keep Britain Tidy, smoking-related materials have consistently appeared as the most littered items in the UK. In 2010/11, the issue reached a decade-high of 83% of sites inspected rising to 99% of sites inspected for certain land uses (main retail and commercial sites). The biggest change in relation to smoking in the past decade was the introduction of the indoor smoking ban in 2007. Following the smoking ban there was an initial drop in the occurrences of smokers' materials, however, smoking related litter then increased reaching a decade-high in 2010/11. This links with circumstantial evidence from local authorities that suggests smoking related litter problems have increased around the exterior of pubs, clubs and restaurants. Prior to the introduction of The Regulations and subsequent FPN powers, the option for dealing with litter from a motor vehicle was limited to a FPN, if it was possible to identify the person responsible.

3.3 Cleaning up streets and countryside currently costs the UK taxpayer around £690 million pounds a year. The annual cost to Cambridge City Council of investigating, bringing prosecutions, clearance and disposal of public realm litter is in the region of £90K per year.

3.4 The recent changes in legislation, which came into effect April 2018, provide local authorities with a more efficient and proportionate response to litter from a motor vehicle, ie. the power to issue FPNs to the registered keeper of the vehicle directly. Prior to the change in legislation, officers had to ascertain who was driving the vehicle at the time of the littering offence. This was carried out via a "request for Information", which was sent to the registered keeper of the vehicle, and asks whether the registered keeper was driving the vehicle at the time of the offence. If they weren't driving, they were requested to supply the details of the person who was driving at the time of the offence.

3.5 The intention is that the level (£150) of the new fixed penalty will act as a deterrent to people littering in the streets and on open spaces; and that local authorities, using them, will see a decrease in the number of littering incidents and the number of prosecutions for littering.

3.6 FPN's are an effective and visible way of dealing with low level environmental crime and will be supported by the public provided they are used sensibly, enforced fairly and are seen as a reasonable response to genuine problems.

3.7 The Council already has the authority to use FPNs as an alternative to prosecutions when dealing with environmental crimes including litter, dog fouling, small-scale fly tipping, illegal advertising and abandoned vehicles. These FPNs are issued by authorised officers within the public realm enforcement team of Streets and Open Spaces, in accordance with the council's Corporate Enforcement Policy. These authorised officers will be responsible for enforcing The Regulations, including issuing the increased penalty level of litter FPNs and the new penalties for littering from a motor vehicle.

3.8 In accordance with the Environmental Protection Act 1990 and The Regulations, the income received from civil penalties for littering from a motor vehicle can only be spent on functions relating to litter and refuse (including keeping land & highways clear of litter and refuse, and enforcement against littering from motor vehicles), graffiti and fly-posting, controlling and enforcing against the unauthorised distribution of free literature. It is not to be used a means of generating income for other uses.

3.9 In determining the appropriate levels of a fixed penalty for littering, the Council needs to take into account the deterrent effect of different levels, peoples' readiness to pay and the levels of fines for littering currently imposed in the magistrates' courts. Fixed penalties that are set too high for local conditions, or are likely to be higher than the Court imposed fine in the event of non-payment, will lead to substantial non-payment rates and so are counter-productive. Although the proposed upper limit of the FPN fine increase has risen to £150, the lower level for early payment has only risen by £10 to £60, which is a reduction of £90 for early payment (within 10 days from date of offence). This is to take in to account that Cambridge has a high student population, along with a high number of people employed in service industries i.e. shop/officer workers, university employees and the higher than average cost of living associated with living in Cambridge.

3.10 There is a set legal standard payment period of 14 days for the payment of fixed penalties. Once a FPN has been issued, an authority cannot prosecute for the alleged offence if the fixed penalty is paid within this period, and this must be stated on the notice itself. For this reason, the period during which a discount for early payment is offered must be less than 14 days, and in line with the Regulations, cannot be more than 10 days. Again, this is consistent with the standards set by other local authorities and the approach already in place in Cambridge City for other public realm environmental crime FPNs.

3.11 The increased penalty level of litter FPNs and the new penalties for

litter will not be appropriate for repeat offenders, for those who are non-compliant or those who do not wish to be issued a FPN. These types of offences will continue to be enforced on a case by case basis and if appropriate, prosecuted in line with the Council's Corporate Enforcement Policy.

3.12 The Council's new powers for littering from a motor vehicle will be used as part of the package of enforcement options available in accordance with the council's Corporate Enforcement Policy.

3.13 Fixed penalty notice (FPN)

The council may give a FPN to a person who is the keeper of a vehicle if the condition in paragraph (3) is met (In these Regulations, a "litter authority" means—

- (a) district council in England;
- (b) county council in England for an area for which there is no district council;
- (c) the Council of the Isles of Scilly.

A penalty notice is a written notice requiring the person to pay a fixed penalty (see regulation 6). 6.—(1) The amount of a fixed penalty is the amount specified by the litter authority under section 88(6A)(a) of the EPA 1990 (which relates to fixed penalty notices for leaving litter)(1).

The condition is that the council has reason to believe that a littering offence has been committed in respect of the vehicle

3.14 Recovery of unpaid amounts

This regulation applies where the council has given a person a FPN and the person has not paid it in full within the fixed penalty payment period.

The council may recover any unpaid amount of the fixed penalty (being the increased amount referred to in regulation 6(3) and any related costs awarded by an adjudicator—

- (a) as a civil debt, or
- (b) as if payable under a county court order, if the county court so orders

- (c) The council's legal department would bring a civil action case against the person for the original offence of littering from a motor vehicle.

3.15 Fixed Penalty Appeals

If the registered keeper of the vehicle feels they are not liable, they can make representations to the council. If these are rejected, they can appeal to an independent traffic adjudicator (same process/people for appealing parking tickets not associated with the council). Any such representations would be considered in line with the council's Corporate Enforcement Policy.

3.16 Financial Implications

In accordance with Environmental Protection Act 1990, to improve public realm cleanliness and environmental crime enforcement services. FPN receipts received by the council will be used for the purpose of exercising functions as set out in the Clean Neighbourhoods and Environment Act 2005. For the purposes of this section the "qualifying functions" of an authority are—

- (a) its functions under Part 4 of the Environmental Protection Act 1990;
- (b) its functions under section 43 of the Anti-social Behaviour Act 2003;
- (c) its functions under Chapter 1 of Part 6 above; and
- (d) such other of its functions as may be specified in regulations made by the appropriate person.

4.0 Staffing Implications

The introduction and issuing of the increased penalty level of litter FPNs and the new litter from motor vehicle penalties will be achieved within existing resources.

4.1 Equality and Poverty Implications

An EQIA has been completed please see attached appendix A.

The impact on businesses, charities or voluntary bodies is expected to be positive, as these proposals should act as a deterrent to litterers and help encourage the responsible disposal of litter.

(a) Environmental Implications

There are no adverse environmental implications. The introduction of increased penalty level of litter FPNs and the new penalties for litter from a motor vehicle will deliver a net positive climate change impact, through the reduction in litter and associated additional vehicle movements required to clear and dispose of it. A reduction in litter will also deliver an increase in the quality of the local environment, a reduction in associated environmental pollution and contamination and associated improvements in public perception, health, civic pride and inward investment.

(b) Procurement Implications

No procurement is necessary for the introduction of increased penalty level of litter FPNs and the new penalties litter from a motor vehicle. Any procurement involved in delivering the associated enforcement service will be undertaken in accordance with the procurement and financial regulations of the council.

(c) Community Safety Implications

There are no adverse community safety implications.

5. Consultation and communication considerations

FPNs are an accepted means of discharging liability to deal with small-scale environmental crime and have been used by the council, in accordance with national legislation and corporate policy, for more than ten years.

The extension of the scope of environmental crime for which FPNs can be issued to increased level of litter FPNs and the new penalties for litter from a motor vehicle is allowed through The Environmental Offences (Fixed Penalties) (England) Regulations 2017, which amend sections 34A(12), 47ZB(4)(5), and 73A(2)(b) (3) & (8) of the Environmental Protection Act 1990, and The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 section 88A of the Environmental Protection Act 1990 (EPA). As the proposed FPN level changes are made in accordance with legislation, no consultation is considered necessary.

The introduction of the new legislation and adopted penalty changes will be advertised to the wider city community through news releases, social and web media and inclusion in future littering campaigns.

The departments and officers who will be responsible for the delivery of this enforcement procedure have been consulted.

6. Background papers

Background papers used in the preparation of this report:

These background papers were used in the preparation of this report:

- Council's Corporate Enforcement Policy - <https://www.cambridge.gov.uk/content/enforcement-policy>
- Council Constitution - <https://www.cambridge.gov.uk/constitution>
- The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016
- The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018
- The Environmental Offences (Fixed Penalties) (England) Regulations 2017
- Keep Britain Tidy LEQSE report, http://www.keepbritaintidy.org/sites/default/files/resources/KBT_How_Clean_Is_England_LEQSE_Report_2015.pdf
- <https://www.gov.uk/government/publications/litter-and-littering-in-england-2016-to-2017/litter-and-littering-in-england-2016-to-2017>

7. Appendices

Appendix A: EqlA

8. Inspection of papers

To inspect the background papers or if you have a query on the report please contact Nicholas Kester, Public Realm Enforcement Officer, tel: 01223 - 457095, email: nicholas.kester@cambridge.gov.uk.